

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CACR06-609

December 6, 2006

BRYANT K. BURNAM
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2004-4366]

HONORABLE WILLARD PROCTOR,
Jr., CIRCUIT JUDGE

V.

STATE OF ARKANSAS
APPELLEE

AFFIRMED

The circuit court found appellant, Bryant K. Burnam, guilty of possession of cocaine and sentenced him to ten years' imprisonment. On appeal, appellant challenges the chain of custody of the cocaine, arguing that the circuit court erred in admitting the cocaine into evidence because the police officer who seized the cocaine testified that it weighed 1.9 grams while the chemist who analyzed the substance testified that it weighed .8609 grams. We disagree and affirm.

Detective B.T. Carmichael of the North Little Rock Police Department testified that on August 26, 2004, he saw appellant pull from his pocket a clear plastic bag containing an unknown substance and drop it on the ground. Carmichael testified that he picked up the bag and arrested appellant. Carmichael identified at trial the "little sandwich baggy containing

the suspected crack cocaine that I recovered from the ground.” He testified that it looked the same as when he found it, except that a knot tied in the bag to keep the contents from coming out had been untied. He further testified that its weight was 1.9 grams, that this included the bag, and that if he had weighed it without the bag, it would have weighed “[s]ubstantially less.” Also, he testified that he submitted it in a manila envelope with tape across the top and his initials on the tape and the envelope, so that “if someone was to tear it and try to re-seal it, you wouldn’t be able to have the same markings.” He further testified that he submitted the envelope to the evidence control room.

Claire Putt, a forensic chemist with the Arkansas State Crime Laboratory, testified that she recognized the sealed manila envelope marked “BTC” across the seal containing one tied plastic bag containing an off-white rock substance. She further testified that none of the seals were broken and there was nothing to indicate that it had been tampered with. She testified that the substance was crack cocaine, that it weighed .8609 grams, and that she did not weigh the substance with the bag because that would not give an accurate weight. She further stated that she did not weigh the plastic bag but that in her opinion it was possible that the plastic bag weighed a gram.

Appellant argues that the circuit court erred in admitting the cocaine into evidence because Carmichael testified that the cocaine weighed 1.9 grams while Putt testified that the cocaine weighed .8609 grams. Although he acknowledges that there was testimony attributing the difference in the weights to the plastic bag, appellant cites *Crisco v. State*, 328

Ark. 388, 943 S.W.2d 582 (1997), and asserts that the proof of the chain of custody for interchangeable items like drugs needs to be more conclusive. He argues that the State should have produced evidence regarding the weight of the plastic bag rather than relying on the speculation.

The purpose of establishing the chain of custody is to prevent the introduction of evidence that has been tampered with or is not authentic, and while the State is not required to eliminate every possibility of tampering with the evidence, the circuit court must be satisfied within a reasonable probability that there has been no tampering. *Walker v. State*, ___ Ark. ___, ___ S.W.3d ___ (Oct. 26, 2006). Further, minor uncertainties in the proof of the chain of custody do not render the evidence inadmissible as a matter of law. *Id.*

In a similar case, *Jones v. State*, 82 Ark. App. 229, 105 S.W.3d 835 (2003), the defendant challenged the chain of custody of marijuana because of a discrepancy between the weight stated in the police report and in the crime lab report. In that case, we acknowledged that the weight discrepancy was considerable, but we noted that the circuit court had before it testimony explaining the difference in that the police weighed not only the marijuana but also the bags and the bags' contents, which included clothes, towels, and a cardboard box. We held that “[w]hile we would appreciate concrete information before us concerning how much the other items, such as the bags and towels, weighed, apart from the marijuana, we remain mindful of the fact that the State did not need to eliminate every possibility of tampering” and that the “trial court merely had to be satisfied within a

reasonable probability that no one had tampered with the evidence.” *Id.* at 235, 105 S.W.3d at 838-39. That analysis applies here as well. While the State could have presented evidence of the weight of the plastic bag, the circuit court merely had to be satisfied within a reasonable probability that no one had tampered with the evidence.

Furthermore, in *Walker*, the Arkansas Supreme Court, when discussing the holding of *Crisko*, noted that the circuit court abused its discretion by receiving a substance into evidence where there were inconsistent descriptions of the substance provided by the officer and the chemist who performed the analysis. In *Crisko*, the State did not recall the officer in order to identify the substance, whereas in *Walker*, the officer did identify the substance. The *Walker* court concluded that because the substance was identified by the undercover officer, it could not say that the conflicting evidence was so significant that the evidence had to have been excluded.

Here, as in *Walker*, the officer did identify the substance introduced at trial. Further, there was evidence submitted explaining the weight discrepancy. Moreover, Carmichael described the procedures he used to prevent tampering, and Putt testified that there was no evidence of tampering. Thus, we cannot say that circuit court erred in admitting the cocaine into evidence.

Affirmed.

BIRD and GRIFFEN, JJ., agree.